

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE ROSS WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

December 21, 1999

No. 206784

Muskegon Circuit Court

LC No. 97-140489 FC

Before: Murphy, P.J., and Hood and Neff, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of first-degree felony murder, MCL 750.316; MSA 28.548, conspiracy to commit armed robbery, MCL 750.157a; MSA 28.354(1), 750.529; MSA 28.797, two counts of assault with intent to murder, MCL 750.83; MSA 28.278, and three counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced as an habitual offender, second offense, MCL 769.10; MSA 28.1082, to life imprisonment for the first-degree murder conviction, twenty-five to seventy-five years' imprisonment for the conspiracy conviction, life imprisonment for each assault with intent to murder conviction, and two years' imprisonment for each of the three felony-firearm convictions.¹ Defendant appeals as of right, and we affirm.

Defendant first argues that the trial court abused its discretion when it admitted testimony regarding a plate containing drug residue which was retrieved from defendant's residence. The decision whether to admit evidence is within the trial court's discretion and will not be reversed absent an abuse of that discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Under MRE 404(b)(1), evidence of other acts may be admitted if (1) it is offered for a proper purpose, (2) it is relevant to an issue or fact of consequence at trial, and (3) its probative value is not substantially outweighed by its potential for unfair prejudice. *People v Crawford*, 458 Mich 376, 385; 582 NW2d 785 (1998). The proffered evidence must be probative of something other than the defendant's propensity to commit the crime. *Id.* at 390. In *People v Rice (On Remand)*, 235 Mich App 429, 439-441; 597 NW2d 843 (1999), this Court held that the trial court did not abuse its discretion by

admitting other acts evidence consisting of defendant's drug use and the carrying of a concealed weapon.

In the present case, the prosecution argued that the admission of the testimony concerning the drug residue on the plate was to demonstrate defendant's motive to commit the robbery. Specifically, the prosecution argued that the robbery was committed in order to obtain money and drugs from the victims, who were involved in the drug trade. In a prosecution for murder, proof of motive is always relevant, although not essential. *People v Fair*, 165 Mich App 294, 299; 418 NW2d 438 (1987). While the evidence offered was for a proper purpose, it is questionable whether the evidence was relevant to a fact or consequence at trial. In *Rice, supra*, the defendant was in need of money to feed his drug habit. When unable to obtain money owed to him, the defendant took a VCR and shot the victim. The two transactions were proximate in time, and the other acts, carrying a weapon and drug habit, were relevant to show an intermediate fact between the other acts and the charged act. *Id.* In the present case, the prosecution demonstrated that drug residue was found on a plate in defendant's residence. However, the prosecution failed to establish that the drug residue was the result of defendant's drug use when defendant did not reside at that location continuously and the residence was shared by defendant's cousin. The drug residue alone cannot be classified as evidence of defendant's drug use. However, the erroneous admission of the evidence was harmless when overwhelming evidence of defendant's guilt was presented, *People v Riggs*, 223 Mich App 662, 705; 568 NW2d 101 (1997), through the testimony of defendant's co-conspirators. We will not reverse where an error, nonconstitutional in nature, was not outcome determinative. *Lukity, supra*.

Defendant next argues that trial counsel's failure to object to admission of a bullet case and shoulder holster recovered from defendant's home denied him the effective assistance of counsel. We disagree. In order to prevail on a claim of ineffective assistance of counsel, defendant must establish that (1) the performance of his counsel was below an objective standard of reasonableness under prevailing professional norms, and (2) a reasonable probability exists that, but for counsel's unprofessional error, the outcome of the proceedings would have been different. *Rice, supra* at 444. We cannot conclude that defense counsel's performance fell below an objective standard of reasonableness.² Furthermore, the outcome of the proceedings would not have been different in light of the overwhelming evidence of defendant's guilt.

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Janet T. Neff

¹ The felony-firearm conviction sentences were to be served concurrently, but consecutive to the sentences imposed for the murder, assault and conspiracy convictions.

² Review of the medical testimony presented at trial reveals that the victims were assaulted with a "high power assault rifle." One of the victims identified defendant as carrying a "long gun." Defense counsel objected to the admission of a shotgun found in defendant's bedroom, which was excluded from trial.

Admission of the shotgun would have been far more prejudicial than the admission of the bullet case and shoulder holster in light of the medical testimony. Furthermore, the bullet case and shoulder holster were admitted when Detective Christine Burnham testified, but the items were not correlated to the assaultive weapon used by defendant during the commission of the robbery.